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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

4 of 11

6 || Plaintiffs

No. C 09-3296 P IH

7 || v.

## **ORDER OF DISMISSAL**

8 | OPTIMA FUNDING, INC., et al.,

## Defendants.

11 The court is in receipt of the declaration filed by American Home's counsel on  
12 October 7, 2009, requesting that the court dismiss plaintiffs' complaint against American  
13 Home with prejudice. On September 8, 2009, this court dismissed without prejudice  
14 plaintiffs' complaint against American Home. Plaintiff was advised to file an amended  
15 complaint no later than October 5, 2009 or the case would be dismissed with prejudice.  
16 That deadline is now two weeks past, and plaintiff has yet to file an amended complaint.

17 The court has considered the five factors set forth in Malone v. United States Postal  
18 Service, 833 F.2d 128, 130 (9th Cir. 1987), and has determined that notwithstanding the  
19 public policy favoring the disposition of actions on their merits, the court's need to manage  
20 its docket and the public interest in the expeditious resolution of the instant litigation require  
21 dismissal of this action. In view of plaintiffs' lack of response to this court's prior order, the  
22 court finds there is no appropriate less drastic sanction.

23 Accordingly, this action is DISMISSED with prejudice as to American Home,  
24 pursuant to Fed. R. Civ. Pro. 41(b), for plaintiffs' failure to prosecute.

25 IT IS SO ORDERED.

26 || Dated: October 19, 2009

Pjw

**PHYLLIS J. HAMILTON**  
United States District Judge